

COMMENTS

In response to the Final Office Action dated April 5, 2002, Applicant has deleted claims 6-7; 9-25 which were previously withdrawn from consideration by the Examiner, amended claim 8, and submitted herewith new claims 26-44 directed towards the elected invention, namely a technique for determining viral load from a patient via use of a viral diffusion curve determined from a microarray output.

With regard to the double patenting and enablement rejections of claim 8, Applicant has amended the claim to include the step of identifying hybridization activity from the microarray output pattern. It is Applicant's position that claim 8 as amended (as well as newly added claim 30) is not coextensive in scope with Claim 34 of the '511 patent (nor claim 45 of the '511 patent) as it, *inter alia*, includes the step of identifying the hybridization activity from the microarray output patterns, and this identification is later used to generate the viral diffusion curve. Furthermore, the claim recites that the identified hybridization activity is mapped to the viral diffusion curve.

Applicant has also added several dependent claims to claim 8, including, *inter alia*, the use of a Extended Kalman Filter, for the nonlinear information filtering, a step that was not claimed in the '511 patent.

Newly added claim 36 is patentably distinct from those within the '511 patent and is a system claim based, *inter alia*, on the methods claimed in claims 41 and 42 of the '511 patent.

Newly added claim 41 is a variation of claim 36 and is also patentably distinct from those within the '511 patent as, *inter alia*, it includes the element of the microarray scanner which scans the microarray to generate the output pattern for use with generating the viral diffusion curve and / or for determining viral load.

If the Examiner believes that a telephone call with Applicant (and the inventor, if needed) would expedite the prosecution of the current case, he is encouraged to contact the undersigned. In addition, kindly associate this application with Customer Number 26686.

Respectfully submitted,



Carl Kukkonen, III

Reg. No. 42,773, Cust. No. 26686

June 4, 2002

C/o ViaSpace Technologies LLC
2400 Lincoln Avenue
Altadena, CA 91001
626.296.6284 (voice)
626.296.6311 (fax)
ck3@viaspace.com

I hereby certify that this correspondence is being faxed to the Assistant Commissioner for Patents, Washington, DC 20231 via 703.246.3172 by Carl Kukkonen on June 4, 2002.

